



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MAIN SEAT**

Case No.: C40/2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED NO
<u>19 MARCH 2026</u> DATE	<u>MOLELEKI AJ</u> SIGNATURE

In the application between:

THE STATE

and

INNOCENT RUDOLF MOHLALA

ACCUSED

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10h00 on 19 March 2026.

JUDGMENT

Moleleki AJ

[1] The Accused, Mr Mohlala was arraigned before this Court on one count of murder read with the provisions of Section 51(2) of the Criminal Law Amendment Act, 105 of 1997 (“the CLAA”). The Accused pleaded guilty on 21 January 2026 on the terms set out in a Section 112(2) statement, as contemplated in the Criminal Procedure Act, 51 of 1977 (“the CPA”).

[2] In the indictment and the commencement of the trial, the Accused was appraised of the provisions of Section 51(2) of the CLAA and that it is the sentencing regime applicable upon conviction. The State accepted the circumstances and facts under which the murder was committed. The circumstances and the facts are briefly as the following.

[3] On 13 October 2024, at approximately 20h30, the Accused arrived home from a tavern. Upon his arrival, his father, the deceased, was home, and he was in a state of intoxication. The deceased demanded money from the Accused, which the Accused undertook to provide at the end of the month. The deceased assaulted the Accused by striking him repeatedly with open hands and fists, in an attempt to chase the Accused out of the house. The Accused was unable to flee as he was also under the influence of alcohol. The deceased retrieved a shovel from the garage and assaulted the Accused therewith. The Accused grabbed hold of the shovel, and the two struggled for possession of the shovel. The Accused managed to take the shovel away from the deceased. Even though the Accused had dispossessed the deceased of the shovel, the deceased continued to assault the Accused. To stop the assault, the Accused struck the deceased several times with the shovel, causing the deceased to fall to the ground.

[4] Mr Pogisho Mohlala, the Accused’s nephew, 14 years old at the time, was present during the incident, and he witnessed the events. After the deceased fell to the ground, the Accused sent Mr Pogisho Mohlala to call the neighbours to assist by taking the deceased to the hospital. It was later announced that the deceased had passed on. The next morning, the Accused handed himself over to the police.

[5] The court has reached a critical stage where a sentence must be imposed. Imposing a sentence has been described as a lonely and onerous task in the legal process. This phrase highlights the heavy responsibility of a Judge to ensure justice in individual cases. Therefore, the sentencing process requires a careful and composed consideration of all the relevant factors. Punishment must fit the criminal, as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances.¹

[6] Corbett JA in *Rabie*² articulated this issue as follows:

“A judicial officer should not approach punishment in a spirit of anger because, being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interests of society which his task and the objects of punishment demand of him. Nor should he strive after severity; nor, on the other hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality. It is in the context of this attitude of mind that I see mercy as an element in the determination of the appropriate punishment in the light of all the circumstances of the particular case.”

[7] The court must find a proper balance between the three essential factors consisting of the personal circumstances of the Accused, the seriousness of the offence and the interests of society³. In this instance, one can also include the impact of the offence on the family.

Mitigation

[8] For purposes of mitigation the following personal circumstances were placed before the Court as set out in a pre-sentence report marked Exhibit “B”. Counsel for the Accused placed factors before this court which should be considered including those

¹ *S v Rabie* 1975 (4) SA 855 (A) at 862G.

² *Ibid* at 866A-C.

³ *S v Zinn* 1969(2) SA 537 (A) at 540G.

necessary to impose a lesser sentence than that prescribed by the law on the charge of murder.

The personal circumstances of the Accused.

[9] He was born on 3 April 1994. He is 31 years old. At the time of the incident, he was 30 years old. He is the youngest in the family of three siblings. His father retired as a soldier and later found employment as a farm labourer. Their mother was unemployed. The Accused and his siblings were raised by both parents until their mother left the marital home in 2015 and shortly thereafter, she fell ill and passed on.

[10] The highest level of education is grade 10. He repeated grade 11 on three occasions and, for that reason, decided to quit school. He attributed his academic difficulties to the stress and emotional strain caused by ongoing domestic violence at home. The Accused's father is said to have been violent when he was intoxicated. He would be abusive to their mother, chase her around with a machete, thus forcing her to flee together with the children to her maternal family for safety. As the Accused's older brother grew older, he would attempt to protect their mother from their father's assault. This would escalate the violence, and the father would assault all of them. The violence affected his schooling as he could not concentrate, do his homework and would have to miss classes due to the physical injuries sustained from the physical abuse. Having left school, he stayed at home due to limited work opportunities based on his level of education.

[11] He found employment as a labourer doing garden services. He later worked as a cleaner at the Setlhare Traditional Council, earning R1 800 per month. From his earnings, he contributed R500 towards household groceries. He is of good health and has expressed willingness to acquire new skills to pursue other work opportunities. The Accused is not married and has no children. He has no previous record of offending.

The nature of the offence

[12] The nature of the offence is in no doubt serious. The taking away of the life of a person is always viewed in a serious light by the courts and society. What is aggravating is that life has been lost, and it cannot be replaced. The fact that these types of offences are prevalent in the court's area of jurisdiction and countrywide makes it even more serious. It is the type of offence that infringes on the right to life, and no amount of punishment can substitute the life of the deceased.

The interests of society

[13] It is imperative that the interests of the society be protected. It is undeniable that we are experiencing high levels of violent crimes in this country. The interest of society in sentencing is stimulated by the society's expectation of the courts to protect them against high levels of crime with which communities are plagued. Although society expects hefty sentences for serious crimes, courts are expected to maintain a balanced approach. The Accused cannot be sacrificed at the altar of deterrence for other would-be offenders, nor can the court impose punishment in anger. The interests, welfare and concerns of society need not be overemphasised over other factors relevant to sentencing.

The victim impact report

[14] A victim impact report was obtained to get the view of the family on the matter. The Probation Officers interviewed the siblings and nephew. As stated, the Accused has two older siblings. The first born, their brother is seriously ill and could not participate in the interview due to ill-health. Therefore, it was only the older sister and her son, the Accused's nephew who were interviewed. The older sister confirmed that they grew up in a violent family as the father would become physically abusive to the mother when he was intoxicated. As siblings, they still maintain a good relationship with the Accused since they understand the circumstances and that the Accused is not a violent person. They continue to maintain a supportive relationship with the Accused. However, the Accused's older sister is of the view that the paternal family has turned their backs on them.

[15] According to the Probation Officer who compiled the Victim Impact Report, the siblings continue to experience distress and trauma. This is because families of murder victims often experience profound trauma, bereavement, shock and a challenge to their sense of meaning. They may be trapped in grief, focusing on traumatic aspects rather than the normal bereavement process. The Accused's nephew is said to have experienced significant trauma, often appearing in deep thought for months after the incident. He is the one who was present when the argument and fight started. He also witnessed his grandfather, the deceased, after he had been severely injured. The community within which the family lives expressed the view that the Accused acted out of character, to the extent they believe that the Accused was driven by some external factors, such as witchcraft, to have acted the way he did. This is the view that the Accused's family also hold.

[16] The Accused's siblings are very sympathetic towards the Accused. Inasmuch as they understand that he has committed an offence and that he must be held accountable, their request is that the court should be lenient with him. They are not excluding imprisonment as a way of punishment, but their view is that the shortest period of incarceration would suffice, as it would allow him an opportunity to be equipped with skills to deal with his anger. From their observation, the Accused could not comprehend that he had caused their father's death, and he showed a lot of remorse. A lengthy period of imprisonment would amount to them having lost two people, their father and brother, both of whom contributed towards the upkeep of the family.

[17] An approach to be applied in sentencing when prescribed minimum sentences are applicable, were set out in *S v Vilakazi*⁴:

“It is clear from the terms in which the test was framed in *Malgas* and endorsed in *Dodo* that it is incumbent upon a court in every case, before it imposes a prescribed sentence, to assess, upon a consideration of all the circumstances of the particular case, whether the prescribed sentence is indeed proportionate to the particular offence. The Constitutional Court made it clear that what is

⁴ *S v Vilakazi* 2009(1) SACR 552 (SCA) at para 15.

meant by the ‘offence’ in the context ... ‘consists of all factors relevant to the nature and seriousness of the criminal act itself, as well as all relevant personal and other circumstances relating to the offender which could have a bearing on the seriousness of the offence and the culpability of the offender.’ If a court is indeed satisfied that a lesser sentence is called for in the particular case, thus justifying a departure from the prescribed sentence, then it hardly needs saying that the court is bound to impose that lesser sentence.”

[18] This court pays sufficient regard to the personal circumstances of the Accused, the nature of the crime he committed and most significantly, the circumstances under which the offence was committed. It does not appear from the evidence before court that the Accused woke up on this particular day with the intention to murder his own father. The circumstances of this case, therefore, called for this court to acquire a deeper understanding of the factors that drive a child to this unfortunate situation.

[19] In the pre-sentence and victim impact reports, the Accused, his siblings and the Accused’s nephew, informed the Probation Officers of the prolonged abuse meted out on them and their mother by the deceased over the years. When they were growing up, their father would engage in a fight with the mother, thus forcing the mother to run away from home with the children. The magnitude and intensity of the abuse led to the deceased’s wife leaving the marital home for good in 2015, leaving the children with the deceased. Shortly after her departure, she fell ill and passed on. The Accused and his siblings attribute their mother’s death to the abuse she had been subjected to over the years. When the Accused’s mother passed on, the Accused was 21 years old. According to the Accused, following the mother’s departure, he became the primary source of abuse from their father.

[20] During the assessment, the Accused showed the Probation Officers scars on his back and head, which he stated were as a result of being assaulted with a large, heavy-duty kind of machete, commonly referred to as a panga, by his father when the Accused was a teenager. It is therefore clear that, over the years, the Accused was subjected to

assaults and humiliation from a very young age. According to the pre-sentence report, this has had a negative effect on him.

[21] According to the pre-sentence report, research indicates that, children exposed to repeated domestic violence are at risk of developing long-term emotional, cognitive, and behavioural difficulties. Further that, prolonged exposure to violence and family instability can result in chronic stress, a state where the body's stress system is always activated. This can negatively affect emotional regulation, memory, and behaviour. Children exposed to sustained domestic violence frequently develop symptoms of anxiety, difficulty with impulse control, heightened vigilance to perceived threats, and challenges in coping with stress and adulthood. Such children often have problems in school. They may have trouble concentrating, miss school and achieve lower academic results. Constant stress can affect brain development, including memory, attention, and decision-making.

[22] The Accused's history of repeated physical abuse and chronic household conflict aligns with the findings quoted by the Probation Officer. His career aspirations have been to become a traffic officer. He dropped out of school as he was not coping due to stress and the situation at home. However, he continues to believe that his aspirations remain achievable.

[23] The court is alive to the fact that, in the context of our country, there are too many families who live and children who grow up in similar circumstances as the Accused. In *N.K v S*⁵, even though the facts are not similar, the court when addressing the issue of childhood adversity, stated that, some manage to triumph over social circumstances, and others remain in them. Therefore, in the context of the present case, it can safely be said that the majority of those who, like the Accused remain in those circumstances, do not murder their abusive parents. Therefore, the circumstances in which the Accused grew up are themselves not unique and cannot on their own, serve

⁵ *S v NK* 2025 (1) SACR 605 (WCC) at para 63.

as a rationale for why the Accused in these circumstances murdered his own father, whilst another child, in similar circumstances does not.⁶ It is for these reasons that each case should be dealt with on its own facts, for it is on those facts that sentencing can be individualised.

[24] The Accused should have left his parental home as he is an adult. However, the Probation Officer made mention of the attachment theory in cases of childhood abuse, where the primary caregiver is both a source of comfort and threat. Such children are at the risk of developing insecure attachment patterns. The deceased as the primary caregiver, particularly after the passing of the Accused's mother when the Accused was 21 years old, caused fear rather than safety on his children. This may have created difficulties in the Accused trusting others or forming healthy relationships in life. The Accused appears to have lived in fear without a solution. Inasmuch as the Accused feared his father, he also had to depend on him as a caregiver. By the time he reached adulthood, he was faced with the difficulty of trusting others and potential relationship problems.

[25] Murder of a parent by their child is often frowned upon by the society. In the eyes of society, by killing his own father, the Accused has violated two basic principles of morality, namely, the prohibition against murder and the society's expectation that a child must honour his own parents. Sight of the fact that our society subscribes to the constitutional values of human dignity and the advancement of human rights should also not be lost.⁷

[26] In terms of Section 51(2)(a) of the Criminal Law Amendment Act 105 of 1997 a person convicted of murder and who is a first offender shall be sentenced to 15 years imprisonment. However, if the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the one prescribed, the court must thereupon impose such lesser sentence as it deems

⁶ Ibid.

⁷ Ibid.

appropriate. In imposing sentence, the Court would still consider any or all of the factors traditionally considered when sentencing offenders. That being so, the ultimate cumulative impact of the traditional factors must be such as to justify a departure from the prescribed sentences.

[27] The defence submitted that there are substantial and compelling circumstances which justified deviation from the prescribed minimum sentences applicable, based on the mitigating factors already placed on record. The defence also argued that the Accused displayed genuine remorse for his actions by pleading guilty.

[28] The State conceded after the court had engaged with its counsel that the circumstances of this case called for deviation.

Remorse

[29] In *S v Matyityi*⁸ Ponnann JA stated the following about remorse:

“There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus, genuine contrition can only come from the appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look.”

[30] The post-attack behaviour of the Accused should also be a factor to be considered when one assesses whether remorse existed. The Accused, upon realizing that he had injured his father, immediately requested his nephew, Pogisho to go call the neighbours to come and assist by taking the deceased to hospital. He was extremely devastated

⁸ *S v Matyityi* 2011 (1) SACR 40 (SCA) at 46I-47B.

when he learnt of his father's passing. His family noticed his remorse upon his release on bail. The court considered the emotional state of the Accused during the proceedings.

Substantial and compelling circumstances

[31] In establishing the presence or absence of substantial and compelling circumstances the court gives due regard amongst others, to those facts which are traditionally considered as mitigating: The Accused is 31 years old at the time of sentencing. He was 30 years old at the time of the commission of the offence. He was gainfully employed as a cleaner prior his arrest earning R1800 per month. From his earnings he contributed R500 towards household groceries. He was clearly contributing positively to the community. He has no history of offending and the community from which he comes does not perceive him to be a violent person.

[32] The court is alive to the fact that, over the years, the Accused was subjected to abuse. His relationship with his father involved provocation and harshness from childhood to adulthood. He essentially grew up in a home characterized by conflict and abuse. There was, therefore, minimal, if any, proper familial ties. It is likely that as a child who experienced abuse from his father, he feared for his life. The deceased is said to have been very aggressive when he was intoxicated. This must have led to an extreme degree of interpersonal discord between the deceased and the Accused, particularly when the deceased was intoxicated.

[33] It is imperative also to mention that on the night in question, both the Accused and the deceased were under the influence of alcohol. The deceased became aggressive towards the Accused when the Accused indicated that he did not have the money, which the deceased demanded. It is the deceased who went and fetched the shovel with the intention of hitting the Accused with it. In an attempt to stop the attack, the Accused grabbed the shovel in order to disarm the deceased. In his drunken state, the Accused tried to run away but failed. However, the assault by the deceased continued. It is not like the Accused was armed and wielding the shovel. It can, therefore, be said that he instinctively grabbed the shovel and struck the deceased several times. It is for this

reason that he admitted that he exceeded the bounds of self-defence. It cannot be denied that the attack was brutal. The Accused pleaded guilty at the first available opportunity. He did not contest his role in the whole incident, nor did he occupy the court's time with a fruitless exercise by attempting to absolve himself. This can be seen as a sign of genuine contrition.

[34] He has been in custody for a period of about 8 weeks, awaiting the finalisation of the matter, following his conviction. Although he admitted that he had been able to appreciate what he was doing, the court considers that alcohol played a role. Provocation may well have affected his judgment of taking care in regard to the deceased in his attempt to defend himself.

[35] It can be accepted that the Accused loved his father dearly. The tragic consequences of his actions will probably live with him for the rest of his life. What distinguishes his case is his behaviour after the stabbing. He assisted by arranging for transport to take the deceased to hospital. His actions and emotions indicated that he was aware of the damage he had caused. He tried by all means to assist the deceased. Clearly, he did not act in wilful disregard of the deceased's plight.

[36] Mandatory minimum sentence is applicable. The question is whether the factors considered herein constitute compelling and substantial circumstances which justify the imposition of a sentence less than the one prescribed. As stated above, the circumstances of this case are exceptional, and imprisonment up to 15 years will be shockingly severe, totally out of proportion, and cruel to the Accused, considering the circumstances of this particular case.

[37] Having decided to depart from the prescribed minimum sentence, the court holds the view that for reasons set out above, a lengthy form of imprisonment would not be appropriate under the circumstances. However, in considering both the aggravating and mitigating factors and balancing them with all the other factors relevant in sentencing, the court is of the view that the Accused cannot be let go without feeling some

consequences for his actions. Inasmuch as the court will exercise a measure of mercy, the Accused should at the same time be reminded of the wrongfulness of his conduct.

[38] Incarceration is unavoidable under the circumstances. However, the court will impose the shortest possible period of time. The Accused is capable of rehabilitation. He is 31 years old and is remorseful, and that is an indication that he is a responsible young member of society who merely needs to be guided through appropriate life skills programmes. This can be done without him having to endure a prolonged period of imprisonment. NICRO has undertaken to work together with Correctional Services in assisting the Accused, together with his siblings.

[39] Consequently, imprisonment as contemplated in terms of Section 276(1)(i) of the Criminal Procedure Act is the only appropriate option, in the court's view.

[40] Accordingly, the Accused is sentenced to 5 years imprisonment in terms of Section 276(1)(i) of Act 51 of 1977.

[41] In terms of Section 103 of the Firearms Control Act, 60 of 2000 the Accused is not unfit to possess a firearm.



M R MOLELEKI
ACTING JUDGE OF THE
HIGH COURT
MPUMALANGA DIVISION,
MBOMBELA

Appearances

Counsel for the State:

Mr. E.C Mathebula
Office of the DPP
Fourth Floor, High Court Building

MMagwanyana@npa.gov.za

Counsel for the Respondent:

Ms. I Erasmus
Legal Aid, Mbombela
Third Floor, High Court Building
West Wing

IllanaE@legal-aid.co.za

Matter heard on:

22 January 2026

Judgment delivered on:

19 March 2026